

REMARKS

In the Office Action, the Examiner indicated that claims 1 through 22 are pending in the application and the Examiner rejected all of the claims.

The §101 Rejection

On page 2 of the Office Action, the Examiner rejected claims 1-8 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant has amended independent claims 1 and 8 to recite a particular machine performing the claimed functions (a computer implemented method utilizing a computer configured to perform the claimed steps). Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-8 under 35 U.S.C. §101.

Rejection of Claims 1-22 under 35 U.S.C. §102

On page 3 of the Office Action, the Examiner rejected claims 1-22 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0062245 to Niu.

The Present Invention

The present invention applies gaming theory and well-understood sales processes and techniques to allow the operator of an interactive sales medium to control what is displayed to a user of the medium in a manner that signals their intentions (e.g., looking for a lower price, looking for a particular incentive, etc.) so that the “strategies” being used by the consumer can be identified and exploited. In particular, the present invention involves the identification of all

selections (i.e., pathways) offered by an interactive content-delivery system (e.g., a website) and presents users of the system with incentives based on the identified probabilities. Selections or pathways less “traveled” are more heavily incentivized than are paths more frequently traveled, to “lure” users towards the less traveled selections. Specifically, the claimed invention, as amended, identifies the probabilities of selection for all possible selections on the website, and designates certain of the selections as low-probability selections. The low-probability selections are then assigned higher-level incentives than those that are higher probability selections.

In a preferred embodiment, “negative incentives” (e.g., the offering of an incentive that is identified to the user as one that will be withdrawn if not acted upon within a predetermined amount of time) are presented as further encouragement for a user to take a particular pathway. This aspect of the invention is claimed, for example, in claim 6.

U.S. Patent Application Publication No. 2002/0062245 to Niu

U.S. Patent Application Publication No. 2002/0062245 to Niu (“Niu”) teaches a system for generating real-time promotions to a visitor to an e-commerce website. Niu looks at calculated probabilities that a user will (a) leave a website or (b) make a purchase on the website, to decide whether or not to generate real-time promotions to the user. In addition to the calculated probabilities, the system also uses the frequency of visits and time of visits by the user to determine if a promotion should or should not be presented to the user.

The Cited Prior Art Does Not Anticipate the Claimed Invention

The Examiner asserts that the “negative incentive feature is not claimed. To the contrary, using negative incentives is claimed in claims 6, 14, and 21.

Further, the Examiner asserts that the fact that Nui doesn't "offer a buyer a discount as said buyer does not need an inventive to buy" is a negative incentive. This is incorrect. At best, not offering an incentive might be characterized as a "neutral incentive" because it does not influence a potential buyer in either direction; it certainly is NOT a negative incentive. Similarly, an "upsell incentive" is not a negative – it is simply an opportunity by the seller to try to sell the potential buyer something with a higher margin than they were originally shopping for. It is not negative in any sense of the word. In the present invention, a negative incentive reduces the amount of an incentive as the potential buyer delays purchasing, tempting the potential buyer to make a purchase before the incentive is reduced to nothing.

In addition, the claims as amended now recite the fact that certain selections are designated as low probability selections based on the identified probabilities, and then these low probability selections are given higher value incentive, to coerce potential buyers to go down the lower probability selection paths, which ideally will gain higher margins for the seller.

Nothing in Niu teaches (or suggests) these claimed elements. Nowhere in Niu is there any discussion or disclosure of going through each selection possibility on an interactive content-delivery system (i.e., each pathway available on a website), identifying the probabilities of selection of each selection possibility, designating certain of the selections as low probability selections, and then presenting higher incentives to users who purchase the lower-probability selections. Applicant acknowledges that Niu looks at calculated probabilities that a user will (a) leave a website or (b) make a purchase on the website, to decide whether or not to generate real-time promotions to the user, and that Niu also uses the frequency of visits and time of visits by the user to determine if a promotion should or should not be presented to the user. While this may be helpful and remotely similar to the concept claimed herein, there is in no way any

teaching or suggestion of “designating certain of said selections as low probability selections based on the identified probabilities” and giving the low probability selections higher value selections than selections having a higher probability of selection, as is claimed herein, in each of the independent claims. For this reason alone, the present invention patentably defines over Niu, and all claims (the independent claims as well as the claims depending therefrom) are in condition for allowance.

In view of the above, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-22 under 35 USC §102.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any fees associated with this communication to applicant's Deposit Account No. 09-0457.

Respectfully submitted

December 9, 2008
Date

/Mark D. Simpson/
Mark D. Simpson, Esquire
Registration No. 32,942

SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2189
Telephone: 215 972 7880
Facsimile: 215 972 4169
Email: MSimpson@saul.com